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IN THE

Supreme Court of the United States

October Term, 1956

No. 490

PRESTON L. WATSON, as Administrator of the Goods and Chattels, Rights and Credits, which were of ROBERT A. WATSON, Deceased,

Petitioner,

v.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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INDEX

	PAGE
Citation to Opinion Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement	4
1. The Facts	4
2. The Decision of the Court of Claims	7
3. Reasons for Granting the Writ	8
Conclusion	13
Appendix A—Opinion and Findings	14
Appendix B—Judgment	51
Appendix C—Order Overruling Motion for Rehearing	52

Citations

Cases:

Boerner v. United States, 117 F. 2d 387 (C. C. A. 2)	11
Fenno v. Weston, 31 Vt. 345	11
Leach & Co. v. Pierson, 275 U. S. 120	11

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner prays that a writ of certiorari issue to review the hereinafter described judgment of the United States Court of Claims.

Citation to Opinion Below

The opinion of the Court of Claims is unreported. It is printed as Appendix A, pages 14 to 51.

Jurisdiction

The statutory provision believed to sustain the jurisdiction of this Court is Section 1255 of Title 28 of the United States Code. The judgment of the Court of Claims was dated and filed May 1, 1956 (R. 63, 92; Appendix B). The judgment dismissed the petition at the close of plaintiff's case. Within the time allowed by the Rules of the Court of Claims plaintiff moved for a rehearing or for a new trial. Plaintiff's motion was denied without opinion by order dated and entered July 12, 1956 (Appendix C; R. 93).

Question Presented

Did the Court err in construing the written agreement between plaintiff's decedent and the Department of Justice?

Statute Involved

The statute involved is H. R. 990, 82d Congress, First Session, approved October 18, 1951 (65 Stat. A-124), which reads as follows:

"AN ACT

"To confer jurisdiction on the Court of Claims to hear, determine, adjudicate, and render judgment on the claim of Preston L. Watson, as administrator of the goods and chattels, rights, and credits which were of Robert A. Watson, deceased.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Court of Claims of the United States be, and hereby is, given jurisdiction to hear,

determine on the merits, and to render in accordance therewith judgment upon the claim with such interest as the court may determine, of Preston L. Watson, as administrator of the goods, chattels, rights, and credits which were of Robert A. Watson, deceased, against the United States for alleged loss and damages suffered by Robert A. Watson arising out of certain transactions between said Robert A. Watson and the Department of Justice of the United States, involving the purchase and importation of sugar from the Republic of Argentina in June 1920, and the alleged neglect, refusal, and failure of the Department of Justice to provide for the distribution thereof in accordance with the terms of a written agreement between claimant's decedent and said Department. Suit upon such claim may be instituted at any time within six months after the date of enactment of this Act, notwithstanding the lapse of time, laches, or any statute of limitations. Proceedings for the determination of such claim, and appeals from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which said court has jurisdiction under section 1491 of title 28 of the United States Code: *Provided,* That this Act shall be construed only to waive the defense of lack of authority of the Department of Justice or its officers in making said agreement and the immunity from suit of the Government of the United States with respect to the claim of Preston L. Watson, as administrator of the goods and chattels, rights, and credits which were of Robert A. Watson, deceased, and not otherwise to effect any substantive rights of the parties. Enactment of this Act shall not be construed to raise any implication of liability by the United States.

"Approved October 18, 1951."

Statement

1. The Facts

Petitioner is the Administrator of the Goods and Chattels, Rights and Credits, which were of Robert A. Watson, deceased, who died on December 30, 1943 (Finding 1; R. 72).

In 1920 Watson was engaged in the City of New York in the business of importing cocoa, sugar and other commodities (Finding 2; R. 72). In 1920 there was a shortage of sugar in the United States (Finding 3 (a); R. 72). Sometime after the amendment of the Lever Act in October, 1919, which regulated the distribution of necessaries including sugar, the enforcement of the Act was placed under the supervision of the Attorney General. A Special Assistant to the Attorney General, Howard E. Figg, formed committees of industry representatives to determine and declare fair prices for some of the commodities affected by the Lever Act, including sugar. Thereafter, another Special Assistant, Armin W. Riley, was placed in charge of the enforcement of the Lever Act (Finding 3 (c); R. 73).

On May 28, 1920 Watson requested his broker, Bolle Watson & Company, to purchase for his account 10,000 tons of Argentine granulated sugar (Finding 5 (a); R. 74). Bolle transmitted the request to Compania de Comercio "Transoceana" which certified that it had purchased for Watson's account 9,850 tons (Finding 5 (b); R. 74).

On June 10, 1920 Watson had a letter of credit issued by J. P. Morgan & Co. in favor of Compania de Comercio "Transoceana" for the sum of $348,500.00 against shipments aggregating 1,000 long tons of sugar (Finding 9 (b); R. 76). In order to obtain the additional sugar ordered, Watson presented the proposition to J. P. Morgan & Co. which called in Mr. Walter S. Orr, a lawyer associated

with the firm of White & Case, to advise on the legality of the proposed importation and sale (Finding 9 (a); Orr, Tr. 110).

On June 11, 1920 Orr met Watson in Washington and they went together to the Department of Justice for information as to means of importing the sugar without incurring Lever Act sanctions (Finding 9 (b); R. 76). The Lever Act, as it was administered by the Department of Justice, prevented the importation of sugar without license (40 Stat. 276; 41 Stat. 297; 40 Stat., Proclamations 52). Orr and Watson conferred with Special Assistant to the Attorney General Figg about the proposed importation of sugar. Figg was unable to advise them but suggested that they take up the matter with Special Assistant to the Attorney General Riley in New York (Finding 9 (b); R. 76).

On June 18, 1920 Watson and Orr met Riley in his office in New York. Watson told Riley that he had sugar available, was ready to import it and could sell it in the United States except that he was prohibited by the operation of the Lever Act (Orr, Tr. 115-116). Riley told them that the country was very much in need of sugar, particularly the canneries and households, because the fruit crop was coming in. He stated, however, that if Watson were to import sugar it would have to be distributed by or through the Department of Justice (Finding 14; R. 78; Orr, Tr. 115). He stated that the Department had no physical equipment for the distribution of sugar but that something would be arranged. Riley exhibited a number of lists showing the quantity of sugar wanted by each of the people on the lists. It added up to a very substantial quantity (Orr, Tr. 116). He then suggested that Watson and Orr get up a letter setting forth their understanding of the arrangements made with the Department of Justice through Riley (Finding 14; R. 78).

In accordance with Riley's suggestion Watson and Orr got up a draft of a letter to incorporate the under-

standing that Watson and Orr had of the verbal arrangement with Riley (Findings 15, 16; R. 80-82). The letter recited that Watson was in a position to accept orders for refined Argentine sugar to market in this country; that he was prepared to import the sugar provided the Department of Justice would write him giving its sanction to the importation upon the conditions that he market the sugar at not exceeding 20 cents a pound; that should the cost change, the selling price would increase or decrease proportionately, and that he would permit the Department of Justice to designate the channels through which the sugar should be distributed, provided that the ultimate purchasers satisfied him as to their financial standing (Finding 16; R. 80-82). This letter, dated June 19, 1920, was transmitted to Riley with a letter dated June 23, 1920 stating that he was enclosing the letter covering the matter which they had discussed and stated that "I have 1,000 tons for July shipment and understand you are referring interested parties to me today or tomorrow. I will be pleased to see them at any time." The Court found that it is "possible" that this letter was delivered to Riley (footnote 18 to Finding 16, R. 82). However, the Court in its opinion held that there was no competent proof that the letter was actually sent by Watson (R. 68). The competency of the proof is discussed hereinafter (pp. 10-11).

By letter dated June 23rd Riley acknowledged Watson's letters of June 19th and June 23rd and stated that

> "* * * you will be permitted to import the sugars mentioned upon the terms set forth in your said letters.
>
> "You are further informed that if you carry out the Department's requirements as to price and distribution as so set forth, no prosecutions under the Lever Act, as amended, will arise therefrom." (Finding 16; R. 82)

Watson wrote Riley on June 23, stating:

> "I take this opportunity of confirming to you my agreement to distribute all sales made after this date of Argentine sugar which I may import in such direction as you may from time to time indicate * * *." (Finding 16; R. 82)

Thereafter, Watson completed the purchase of the Argentine refined sugar. 1,781 long tons were laden aboard the Steamship WINONA and imported into the United States (Finding 23; R. 86-87).

It was the practice of importers of sugar to try to dispose of sugar immediately upon purchase. Watson, in fact, before his agreement with Riley, sold 4,000 tons of other Argentine sugar immediately upon purchase (Finding 17; R. 82; Finding 23; R. 86; Logan, Tr. 141).

In line with Riley's statement to Watson and Orr that something would be arranged for the distribution of the sugar, Riley told Watson that he would receive from James Boyd of 135 Broadway instructions where shipment should be directed (Finding 25; R. 87-88). Defendant conceded that the Government never designated any purchasers for Watson's sugar (Tr. 160). There is no evidence that Watson was ever released from the restriction upon distribution of his sugar. With a decline in the market price, the sugar was left on his hands. Plaintiff suffered severe losses in the liquidation of the sugar and was ruined financially (Findings 26, 28; R. 89, 90).

2. The Decision of the Court of Claims

The Court, adopting verbatim the findings of the Commissioner, granted defendant's motion made at the close of plaintiff's case to dismiss the petition and concluded, as a matter of law, that plaintiff was not entitled to recover. Ignoring half of the agreement, the Court concluded that the only purpose of the agreement between

Watson and Riley was that Watson "be granted freedom from Lever Act prosecution and that there was no attempt to obtain any promise from the Government to furnish purchasers of sugar."

3. Reasons for Granting the Writ

Review of the decision below is sought to correct plain error apparent upon its face. In its opinion the Court concluded that "the only purpose of the agreement between Watson and Riley was that Watson be granted freedom from Lever Act prosecution and that there was no attempt to obtain any promise from the Government to obtain purchasers of sugar" (R. 71). Plaintiff does not claim that the agreement contained any express promise by the Department of Justice to obtain purchasers for the sugar. The agreement contained three terms: (1) that Watson would sell his sugar at not more than a stipulated price; (2) that he would permit the Department of Justice to designate the channels through which the sugar should be distributed; and (3) that Watson would be free of Lever Act prosecution if he fulfilled the first two terms. As is plain from the exchange of writings between Watson and Riley, the agreement subjected the sugar to the control of the Department of Justice for distribution in accordance with its direction. By it Watson surrendered his freedom of action. Thus Watson was hamstrung while the Department of Justice retained the right of distribution of the sugar. The Department's default lay in its failure to give any directions for distribution.

That this is the correct construction of the agreement appears from the findings in the Court's decision. Thus the Court found that one of the terms of Watson's offer of June 19, 1920 to Riley was as follows:

> "I agree to permit your office *to designate the channels through which this sugar shall be distrib-*

uted, provided that the ultimate purchasers satisfy me as to their financial standing, and as to the terms of settlement." (R. 67) (Emphasis supplied.)

The Court further found that Watson wrote to Riley on June 23, 1920 as follows:

> "I take this opportunity of confirming to you *my agreement to distribute all sales made after this* date of Argentine sugar which I may import *in such direction as you may* from time to time *indicate* • • • ". (R. 67) (Emphasis supplied.)

The Court also found that Riley wrote Watson on June 23, 1920 as follows:

> "This is to confirm our various conversations and in reply to your letters of June 19 and 23, 1920.
>
> "In view of the fact that the sugar requirements of the people of this country are in excess of the supply now available and in order to encourage the importation into this country of foreign sugars, you will be permitted to import the sugars mentioned upon the terms set forth in your said letters.
>
> "You are further informed that if you carry out the Department's requirements as to price and *distribution* as set forth, no prosecutions under the Lever Act, as amended, will arise therefrom." (R. 67) (Emphasis supplied.)

Plaintiff claims that Watson wrote Riley another letter dated June 23, 1920 which was the letter acknowledged by Riley on June 23, 1920 in which he stated:

> "I enclose your letter which I think will cover the matter which we discussed this morning and if you can kindly hand bearer the response, I will proceed in the matter immediately.

> "I have 1,000 tons for July shipment and understand you are referring interested parties to me today or tomorrow." (R. 82)

The Court below in its findings observed that "it is possible that it was delivered to Riley" (R. 82) but in its opinion stated "there is no competent proof that this letter was actually sent by Watson" (R. 68).

For one ground of competency plaintiff relied upon the identification of the letter by Riley in his deposition. The deposition is confused because Riley first denied having received the letter, then identified copies of the correspondence which he had had with Watson, included among which was a copy of this letter. There is, however, a second and certain ground of competence in the exchange of correspondence between Watson and Riley in November, 1920. On November 12, 1920 Watson wrote Riley in part as follows:

> "* * * I beg to advise you that after our original arrangement in June, I wrote you on June 23rd stating that 'I have 1,000 tons for July shipment and understand you are referring interested parties to me today or tomorrow.'
>
> "You then told me that the Department of Justice was not personally going to handle any merchandise but that I would receive from Mr. James Boyd of 135 Broadway, instructions where shipments should be directed under the agreement I had made with the Department of Justice." (R. 87-88)

Although Riley, on November 17, 1920, acknowledged receipt of Watson's letter of November 12, 1920, he ignored the quoted passages and merely took occasion to "contradict the last paragraph in your letter in which you state you received no replies from me to any of your communications" (R. 88-89). Had the quoted passages in Watson's letter been incorrect, Riley, who had full knowledge of the

facts, would naturally have contradicted them. This evidence was competent as tending to show that the statements made by Watson and not denied by Riley were true.

Fenno v. *Weston*, 31 Vt. 345;
Boerner v. *United States*, 117 F. 2d 387 (C. C. A. 2);
cf., *Leach & Co.* v. *Pierson*, 275 U. S. 120, 128.

The Court further found that in Watson's initial draft of his letter to Riley summarizing their discussion he wrote in part as follows:

> "I propose to sell this sugar ~~to~~ where it will reach such channels as ~~you~~ the Dept of Justice through your instrumentality may indicate and which I understand will be in the direction which will be for the public good.
>
> "In consideration of my accepting the control of the Dept. for the distribution of my importations of Argentine sugar in the ~~channels~~ manner above described and which I accept I understand & desire you to so confirm that I will be permitted to sell said importations at a profit not exceeding ?" (R. 65-66)

The conclusion of the Court that the only purpose of the agreement between Watson and Riley was that Watson be granted freedom from Lever Act prosecution disregards the unimpeached testimony of the witness Walter S. Orr who appeared at the trial and testified that Riley told him and Watson that "if we were to import it we would have to have it distributed by or through the Department of Justice"; that Riley exhibited lists to them "showing the quantity of sugar wanted by each of the various people on these lists"; that Riley showed them "some orders, or some places where he wanted the sugar to go"; that Riley had "some orders or something and some kind of papers where somebody wanted six tons, somebody wanted one hundred six tons and so forth" (R. 78-79; Orr., Tr. 115-116; 129-130).

The Court, however, found that Riley "never had reference to individual buyers; that the lists he showed them were lists of purchases that had been reported to him by a committee of importers for assurance to him that the imported sugars were going into proper channels of trade * * *" (R. 79-80). This finding was based in part upon testimony of Riley by deposition as follows:

> "Q. Did you have any lists of people who were asking for sugar?
>
> "A. No." (Riley Deposition, S. M. 14)

Riley's testimony was specifically impeached on this point by prior inconsistent testimony that he had given on January 6, 1925 before a House Committee where he stated:

> "I did undertake to give specific names and addresses of people who were in need of sugar and to whom the delivery of sugar would be agreeable on our part. * * *" (Plff's Ex. 24, p. 3)

Other evidence and circumstances point to the construction of the agreement that the Department of Justice reserved the right to direct the distribution of Watson's sugar. The Court found that on June 24, 1920 the Department of Justice announced that a purchase of 14,000 tons of Argentine sugar by American Trading Company "had been purchased under the direction of the Department of Justice and would be distributed by the United States Government to the essential industry and household consumer" (R. 68, 83). That the Government was in a position to dictate the manner in which imported sugar might be distributed appears from the provisions of the Lever Act (40 Stat. 276, amended 41 Stat. 297). Under Section 5 of the Lever Act the President was authorized by Proclamation to require licenses for the importation of sugar. By Proclamation of September 7, 1917 the President required all persons engaged in the business of

importing sugar to secure, on or before October 1, 1917 a license to be issued under such rules and regulations governing the conduct of the business as may be prescribed (Proclamations, 1917, 40 Stat. 52). By Proclamation of November 21, 1919 the President transferred from the United States Food Administration to the Attorney General all the powers and authority theretofore vested in the United States Food Administrator under authority of the Lever Act. These powers and authority embraced the licensing of importers of sugar (Proclamations, 1919, 41 Stat. 34). The Department of Justice, therefore, had authority over Watson and was in a position to exact the agreement which it did.

Clear evidence of the purpose of the agreement between Watson and the Department of Justice has been ignored or glaringly misconstrued by the Court below. The result has been a denial of justice. This Court should exercise its supervisory powers over the Court of Claims to correct the plain error appearing on the face of its decision.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated, September , 1956.

Respectfully submitted,

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APPENDIX A

Opinion and Findings

IN THE

UNITED STATES COURT OF CLAIMS

No. 50407

(Decided May 1, 1956)

PRESTON L. WATSON, AS ADMINISTRATOR OF THE GOODS AND CHATTELS, RIGHTS AND CREDITS, WHICH WERE OF ROBERT A. WATSON, DECEASED v. THE UNITED STATES

Mr. John W. Burke, Jr. for the plaintiff. *Mr. Alfred C. B. McNevin* and *Mr. Burton H. Brody* were on the briefs.

Mr. William A. Stern II, with whom was *Mr. Acting Assistant Attorney General George S. Leonard*, for the defendant. *Mr. Paris T. Houston* was on the brief.

OPINION

LARAMORE, *Judge*, delivered the opinion of the court:

This is an action brought by plaintiff as administrator of the estate of Robert A. Watson, deceased, under a private act to recover alleged losses and damages suffered by plaintiff in the importation of sugar from the Argentine in 1920. The act, H. R. 990, 82d Congress, 1st session, under which this suit is brought, provides as follows:

> * * * the Court of Claims * * * is given jurisdiction to hear, determine on the merits, and to render in ac-

cordance therewith judgment upon the claim with such interest as the court may determine, of Preston L. Watson, as administrator * * * of Robert A. Watson, deceased, against the United States for alleged loss and damages suffered by Robert A. Watson arising out of certain transactions between said Robert A. Watson and the Department of Justice of the United States, involving the purchase and importation of sugar from the Republic of Argentina in June 1920, and the alleged neglect, refusal, and failure of the Department of Justice to provide for the distribution thereof in accordance with the terms of a written agreement between claimant's decedent and said Department. Suit upon such claim may be instituted at any time within six months after the date of enactment of this Act, notwithstanding the lapse of time, laches, or any statute of limitations. Proceedings for the determination of such claim, and appeals from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which said court has jurisdiction under section 1491 of title 28 of the United States Code: *Provided,* That this Act shall be construed only to waive the defense of lack of authority of the Department of Justice or its officers in making said agreement and the immunity from suit of the Government of the United States with respect to the claim of Preston L. Watson, as administrator * * * of Robert A. Watson, deceased, and not otherwise to effect any substantive rights of the parties. Enactment of this Act shall not be construed to raise any implication of liability by the United States.

The questions presented are: (1) Whether or not the United States entered into a written agreement with Watson providing for the distribution of Watson's sugar; (2) if such an agreement was entered into, did defendant undertake to furnish purchasers at any particular price; (3)

if there was such a contract, did plaintiff establish a breach thereof by defendant; and (4) if there was a breach, did plaintiff prove any losses or damages.

As an aftermath of World War I, certain economic dislocations occurred which contributed to a great shortage of sugar in the United States in 1920. To prevent profiteering, Congress, in 1919, had passed a food control act popularly known as the Lever Act, which imposed criminal penalties upon persons guilty of making unreasonable charges for necessaries. Enforcement of the Lever Act was in charge of the Department of Justice.

In May 1920, Watson, through his broker, arranged to purchase 9,850 tons of Argentine sugar. He was obligated to furnish the Argentine seller with letters of credit for the sugar, of which only 70 percent could be exported to the United States. On June 10, 1920, Watson arranged with J. P. Morgan & Company to issue a letter of credit for 1,000 tons. Watson set about reselling the sugar he had purchased, and, on June 12, 1920, sold 2,000 long tons at 19 cents per pound to Lowney & Company of Boston, Massachusetts. On June 16, 1920, he agreed to sell to E. Atkins & Company 2,000 tons at 19¼ cents per pound. The Lowney and Atkins sales were evidently financed by letters of credit issued by those purchasers to Watson, or the Argentine seller. Thus, by June 16, 1920, Watson had sold 4,000 tons and had arranged for financing the importation of 4,000 tons.

During the early part of June 1920, and before June 10, 1920, J. P. Morgan & Company and other banks considering the financing of the importation of Watson's sugar, were concerned about becoming involved in Lever Act prosecutions. One of Morgan's attorneys, Mr. Walter S. Orr, was assigned to determine what arrangements might be concluded to assure Watson's freedom from Lever Act prosecution if he imported sugar into the United States and sold it.

Beginning June 11, 1920, Orr and Watson conferred with a special assistant to the Attorney General, who suggested they confer with Armin W. Riley, a special assistant to the Attorney General, whose office was in New York.

On June 18, 1920, Riley, Watson, and Orr held a conference which ended with an arrangement that Watson and Orr draft a letter setting forth their understanding of the conference with Mr. Riley.

Immediately following the conference on June 18, 1920, Watson drafted a letter to Riley summarizing the situation and their discussion. This draft reads as follows:

> I take this opportunity of confirming to you my understanding of ~~our~~ the attitude of the Govt as it relates to importations of Argentine Sugar by me.
>
> I propose & have arranged financing for the purpose ~~of~~ to import during the next three months a large quantity of refined Argentine sugar.
>
> I propose to sell this sugar ~~to~~ where it will reach such channels as ~~you~~ the Dept of Justice through your instrumentality may indicate and which I understand will be in the direction which will be for the public good.
>
> In consideration of my accepting the control of the Dept. for the distribution of my importations of Argentine sugar in the ~~channels~~ manner above described and which I accept I understand & desire you to so confirm that I will be permitted to sell said importations at a profit not exceeding?

Watson submitted the draft to Orr, who prepared another draft which was given to Watson, who set it up on his own stationery and sent it to Riley. The letter was sent by Watson June 19, 1920, and comprises the first item in an exchange of correspondence upon which plaintiff relies as a contract in writing. Plaintiff's claim in this suit is based upon an alleged breach of that contract by defendant. The letter of June 19, 1920, from Watson to Riley, reads as follows:

In connection with the proposed purchase of a large quantity of refined Argentine sugar, I have been in communication with your office, both in Washington and in New York, in order to clarify the situation, particularly as regards the operation of the Lever Act applied to the sale of this sugar in the United States.

The facts are substantially these.

I am in a position to accept offers for refined Argentine sugar, which it was proposed to market in this country. In order to obtain the sugar, it was necessary to present the proposition to financial institutions so that proper arrangements could be made to establish credits necessary to finance the purchase.

You will appreciate that the regulations concerning the export of sugar, issued by the Government of the Argentine Republic, and the attendant hazards in connection with the purchase and sale of this sugar make this transaction entirely different from the ordinary transactions carried on by the ordinary wholesaler of sugar in this country.

In view of the great shortage of sugar in this country, it was deemed advisable to discuss with your department the advisability of bringing this sugar to America, and the possible effect of the Lever Act upon the profit believed to be necessary in order to meet the risks involved and the necessary financing.

Some days ago this situation was fully discussed with your department in Washington and the difficulties arising under the Lever Act seemed to be such as to make it inadvisable for me to pursue the matter further, but the great shortage of sugar in this country and the need to take measures to relieve the same has caused me to take up the matter anew with you in order to see if the transaction can be consummated. I am therefore laying the matter before you again for consideration, after an informal discussion with you

today. I am prepared to do my best to carry the transaction through, provided your department will write me a letter giving its sanction to the importation of sugar from Argentina upon the following conditions:

1. Upon the basis of the present cost price to me of refined Argentine sugar, approximately 17¼ cents per pound c. i. f. American ports, I propose to market the sugar at not exceeding 20 cents per pound.

2. Should the cost price to me of refined Argentine sugar change, the sale price by me would increase or decrease proportionately, as the case may be, so that the sale price might be either greater or less than 20 cents per pound, dependent upon the cost price to me.

3. I agree to permit your office to designate the channels through which this sugar shall be distributed, provided that the ultimate purchasers satisfy me as to their financial standing, and as to the terms of settlement.

Inasmuch as I expect to begin the importation of this sugar at once, it is highly important that your decision be rendered immediately, so that negotiations can be completed and credits cabled.

On June 23, 1920, Watson wrote to Riley as follows:

I take this opportunity of confirming to you my agreement to distribute all sales made after this date of Argentine sugar which I may import in such direction as you may from time to time indicate, and I am very pleased indeed to think that with your cooperation I can supply those industries which are badly in need of this commodity at a lower net price than they can obtain in any other direction. * * *

In reply to these two letters, Riley wrote a letter to Watson on June 23, 1920, reading as follows:

> This is to confirm our various conversations and in reply to your letters of June 19 and 23, 1920.
>
> In view of the fact that the sugar requirements of the people of this country are in excess of the supply now available and in order to encourage the importation into this country of foreign sugars, you will be permitted to import the sugars mentioned upon the terms set forth in your said letters.
>
> You are further informed that if you carry out the Department's requirements as to price and distribution as so set forth, no prosecutions under the Lever Act, as amended, will arise therefrom.

Plaintiff also claims that Watson wrote another letter to Riley on June 23, 1920, in which he advised Riley that he had 1,000 tons of sugar for July shipment "and understand you are referring interested parties to me today or tomorrow. I will be pleased to see them at any time." Riley, in his testimony denied having received the letter, and there is no competent proof that said letter was actually sent by Watson.

After the exchange of the foregoing correspondence, Watson arranged with the Bank of British West Africa for a letter of credit in the sum of $120,000, the commitment for which remained unused until December 2, 1920. The only other credit obtained by Watson after that date was an additional letter of credit from J. P. Morgan & Company, known as Credit No. 41, covering 1,000 tons of sugar in an aggregate amount of $348,500.

The American market for imported white sugars began to decline during the week ending June 3, 1920, and, during the remainder of the month the market slackened considerably. On June 24, 1920, the Department of Justice announced that a purchase of 14,000 tons of Argentine sugar by American Trading Company had been purchased under the direction of the Department of Justice and would be distributed under the direction of the Government agencies

to essential industries and household consumers. The market for imported sugar continued its decline, and, by July 15, 1920, the demand therefor was very quiet and it was quite difficult to dispose of such sugars except in scattered localities where supplies were still limited.

On July 19, 1920, Morgan opened its Letter of Credit No. 41. Between June 23, 1920, the date of Riley's letter, and July 19, 1920, it is not established that Watson had the financing with which to offer Argentine sugar for sale except the commitment of $120,000 made by the Bank of British West Africa which was unused until December 1920. After June 23, 1920, there is no evidence that Watson made any commitments for the purchase of Argentine sugar in addition to those made by him in late May or early June, except insofar as Morgan Credit No. 41, and the credit arranged with the bank of British West Africa may have been used to make the earlier commitments of Watson available for offer by Watson on the American market. It was not established that in obtaining the credits with the Bank of British West Africa or Morgan Credit No. 41, Watson did so in any reliance on any commitment or undertaking by Riley to supply the names of potential purchasers of Watson's sugar.

The market, during July and August 1920, continued to decline. Some time during July, and the early part of August 1920, part of the sugar purchased by Watson was shipped from Argentina on account of the sales to Lowney and Atkins and on account of the Morgan credit of June 10, 1920. Shortly after August 19, 1920, the *SS. Winona* left Buenos Aires for New York with 973 long tons of Argentine sugar consigned by Watson's seller to J. P. Morgan & Company, and 808 tons consigned to Watson.

It is not established by the evidence that after the date of the Riley letter Watson was in a position to offer Argentine sugar for sale in the United States prior to the departure of the *SS. Winona* from Buenos Aires.

When the *SS. Winona* arrived in New York on September 22, 1920, American refined sugar was being quoted at 14½ cents per pound, and thereafter sugar quotations continued a steady decline.

The 1,781 long tons of sugar aboard the *SS. Winona* were sold at prices of approximately 5.6 cents per pound, leaving Watson indebted to Morgan for more than $200,000 and to the Bank of British West Africa for more than $31,000. Watson's sugar purchases which had not been imported from Argentina consisted of 1,429 long tons, and were sold there at a price of approximately 7.8 cents per pound. Plaintiff is seeking damages for losses sustained by Watson both on the sugar which was imported and the sugar which remained in Argentina.

It was not established by the evidence that a loss was sustained on account of the sugar sold in Argentina, or that if any such loss was sustained it fell on Watson, or that if Watson sustained such a loss it had no relation to the Watson-Riley agreement of June 1920.

The evidence as a whole warrants the inference that Watson's venture in Argentine sugar was ruinous to him, that his indebtedness to the banks was a substantial factor in contributing to his ultimate ruin, and that he did suffer severe losses in the liquidation of the 1,781 tons of sugar shipped on the *SS. Winona*, but that the amount of his losses in the liquidation of the 1,781 tons cannot be determined from the evidence with exactness.

It is not established by the evidence that Riley intended to undertake, or implied that he would undertake to supply to Watson the names of purchasers who would buy the sugar Watson expected to import, or that Watson understood Riley at the time to intend or imply such an undertaking.

It was not established by the evidence "that Riley did not 'designate the channels through which sugar shall be distributed' at the conference with Watson on June 18, 1920."

It was not established by the evidence that after the Watson-Riley correspondence of June 1920, Watson sought, or refrained from seeking, purchasers of sugar because of anything contained in the agreement, or that after the Watson-Riley agreement the market in the United States for granulated sugar brought, or to be brought, from the Argentine, was ever such that Watson could have disposed of his commitments, or any part thereof, at a profit to him.

At the conclusion of the presentation of plaintiff's evidence, defendant moved the court to dismiss the petition, and, on the basis of the findings of fact, with particular reference to the failure of proof recited in findings 21, 23 (c), 27, and 29, the commissioner recommended that defendant's motion be granted and the petition dismissed.

It is incumbent upon the plaintiff in order to recover, under the terms of the reference act, to show (1) that a contract was entered into between Watson and the United States to furnish purchasers of sugar at a particular price; (2) to show a breach of the contract; and (3) to prove damages.

A review of the record reveals it is not established by the evidence that between June 23, 1920 (the date of Riley's letter) and July 19, 1920 (the date of Morgan Credit No. 41), Watson had the financing with which to offer Argentine sugar for sale, excepting the commitment of $120,000 of the Bank of British West Africa, which was unused until December; or that after June 23, 1920 (the date of the Riley letter), Watson made commitments for the purchase of Argentine sugar in addition to those made by him in late May or early June through Bolle and Compania, except insofar as Morgan Credit No. 41, and the credit arranged with the Bank of British West Africa may have been used to make the earlier commitments of Watson, Bolle, and Compania available for offer by Watson on the American market; or that Watson, in arranging either the $120,000 credit with the Bank of British West Africa or Morgan Credit No. 41, did so in reliance on any commit-

ment or undertaking by Riley to supply the names of potential purchasers of Watson's sugar; or that after June 23, 1920 (the date of the Riley letter), Watson was in position to offer Argentine sugar for sale in the United States prior to the departure of the *SS. Winona* from Buenos Aires; that a loss was sustained on account of the sugar sold in Argentina; or that any of such loss, if one was so sustained, fell on Watson; or that if Watson had sustained such a loss, it would have any relation to the Watson-Riley agreement of June 1920; or that Riley intended to undertake or implied that he would undertake to supply to Watson the names of purchasers who would buy the sugar Watson expected to import, or that Watson understood Riley at the time to intend or imply such an undertaking; or that Riley did not "designate the channels through which the sugar shall be distributed" at the conference with Watson on June 18, 1920; or that, after the Watson-Riley agreement of June 1920, Watson sought or refrained from seeking purchasers of the sugar because of anything contained in the agreement; or that, after the Watson-Riley agreement of June 1920, the market in the United States for granulated sugar brought or to be brought from the Argentine was ever such that Watson could have disposed of his commitments or any part thereof at a profit to him.

Therefore, we conclude that there was an agreement between Watson and Riley but that the only purpose of the agreement was that Watson be granted freedom from Lever Act prosecution and there was no attempt to obtain any promise from the Government to furnish purchasers of sugar. Under the agreement Watson was not free of all restrictions upon distribution. He could not sell to a speculator nor to any one not in a normal channel of distribution. However, he could distribute in normal channels except where the Department of Justice might direct otherwise, such as hospitals. Even then he was not forced to sell unless he was satisfied as to the financial status of the purchasers.

The only reasonable inference is that Watson gambled and lost due to a declining market.

For failure of proof we adopt the recommendation of the commissioner and dismiss the petition.

MADDEN, *Judge;* WHITAKER, *Judge;* and LITTLETON, *Judge,* concur.

JONES, *Chief Judge,* took no part in the consideration or decision of this case.

FINDINGS OF FACT

The court, having considered the evidence, the report of Commissioner W. Ney Evans, and the briefs and argument of counsel, makes findings of fact as follows:

1. (a) Plaintiff is the duly qualified administrator of the estate of his father, Robert A. Watson, who died intestate on December 30, 1943.[1]

(b) This suit was filed on November 15, 1951, under authority contained in an Act of Congress approved October 18, 1951, and the suit is prosecuted pursuant to the terms of that statute.[2]

2. (a) All remaining facts material to the action relate to the activities of plaintiff's father (hereinafter referred to as Watson) who was engaged in the business of importing cocoa, sugar, and other commodities.

(b) The transactions material to the action took place in 1920, and relate to the importation of granulated sugar from the Argentine Republic for sale in the United States.

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[1] Letters of administration upon the goods and chattels, rights and credits, which were of Robert A. Watson, were granted to plaintiff on February 28, 1948, by the Surrogate of Essex County, New Jersey.

[2] The text of the act is set forth in finding 30, from 65 Stat. A-124.

3. (a) One of many evidences of economic dislocations in the United States in 1920, reflecting the aftermath of World War I, was a shortage of sugar.

(b) At the time of the transactions material to this suit, the Food Control Act (popularly known as and hereinafter called the Lever Act)[3] imposed criminal penalties upon any person guilty of willfully making "any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" and for exacting "excessive prices" therefor. "Necessaries," as used in the act, included sugar.

(c) Some time after the amendment of the Lever Act in October 1919, the enforcement of the act was placed under the supervision and direction of the Attorney General of the United States. During the weeks or months immediately prior to the Watson transactions, a Special Assistant to the Attorney General (Howard E. Figg) had formed committees of industry representatives to determine and declare fair prices for some of the commodities affected by the Lever Act, including sugar. During the days or weeks immediately prior to the Watson transactions, a change of policy was adopted by the Attorney General, in relation at least to sugar, and another Special Assistant (Armin W. Riley) was placed in charge with instructions to abandon the so-called "fair price commissions" and to enforce the Lever Act according to its terms.

4. During the year 1920 there was published weekly in New York a statistical trade journal (established several years earlier) known as the Weekly Statistical Sugar Trade Journal.[4] On the second page of each issue there was a brief summary of the week's developments in the market

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[3] The Act of August 10, 1917, 40 Stat. 276, as amended by the Act of October 22, 1919, 41 Stat. 297.

[4] Volume 44 of the Journal, containing all of the 1920 issues, is in evidence as plaintiff's exhibit No. 5.

for refined sugar.[5] Following are excerpts from the summaries contained in five succeeding issues of the Journal extending from April 29 to May 27, 1920.

(1) April 29, 1920. "* * * During the week there was quite an active demand for high grade white sugars, and sales are reported of Javas and other whites at full up prices, which figure from 20¢ to 21¢ a pound, duty paid."

(2) May 6, 1920. "The new announcements of allotment prices have been the 23¢ basis named by Warner and * * * 23¢ by Arbuckle * * *. Arbuckle * * * also issued instructions that all withdrawals and contracts must bear Food Administration license number of buyer * * *. Brokers license number must also be stated. This policy will undoubtedly be adopted by all refiners. * * * All refiners have apparently agreed to discontinue selling sugar to any buyer who intends purchasing only for speculative reasons * * *. The Department of Justice, which has been making an extensive investigation * * * has presented or expects to bring charges against some prominent sugar concerns in New York City for alleged profiteering."[6]

(3) May 13, 1920. "Several changes were made in allotment basis by refiners during the week. * * * the Savannah * * * allocation price was 18.50¢ and * * * Henderson * * * quoted 23¢. * * * American announced an advance from 18.50¢ to 19.50¢ and * * * Howell made announcement to the same effect. Revere * * * quotes 21.50¢. Business in

[5] There is no evidence that Watson, his broker or his bankers, or the representatives of defendant with whom Watson dealt, read the Journal or were influenced by its reports.

[6] References in this and subsequent quotations from the Journal to "allotments" and "licenses" presumably pertain to the mechanics of the administration of the Food Control Act other than prosecutions for profiteering. The evidence in this case does not refer to these mechanics except by the merest indirection, and there is no evidence from which to piece together the full story of sugar during and immediately after World War I.

high grade raw sugars has been quite active during this week, the latest quotations being about 22¢ duty paid for this class of sugar."

(4) May 20, 1920. "The changes in allotment basis * * * during the week were advances by American and Howell * * * to 20.50¢ and * * * by * * * California * * * to 23.25¢ * * *. This morning American advanced to 21.50¢ * * *. * * * Federal were considering offerings for July/August shipment at 26¢ * * * and the sugars were rapidly absorbed."

(5) May 27, 1920. "The only changes reported are that Howell and American advanced their allotment prices to * * * 21.50¢ and 22.50¢, respectively, and Arbuckle to 26.50¢. White raws are on offer at somewhat lower prices, say 22¢ to 23¢ duty paid."

5. (a) On May 28, 1920, Watson requested his broker, Bolle, Watson and Company (hereinafter referred to as Bolle) to purchase for his account 10,000 tons of Argentine granulated sugar.

(b) Bolle transmitted the request to Compania De Commercia "Transoceana" of Buenos Aires (an Argentine corporation hereinafter referred to as Compania), and Compania certified to Bolle that it had purchased for Watson's account 9,850 tons of Argentine sugar.[7]

(c) Of the purchases so certified, Compania reported that 2,000 tons were purchased on May 29, 1920, the day after Watson's order;[8] 4,350 tons were purchased the next week (2,350 tons on June 2[9] and 2,000 tons on June 3);

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[7] Bolle and Compania had had previous dealings in grain. This appears to have been their first transaction in sugar.

[8] Bolle confirmed this purchase by letter to Watson dated June 1, 1920, as being for "June/July arrival at Buenos Aires."

[9] The June 2 purchases consisted of 350 tons of granulated sugar and 2,000 tons of pile sugar.

and 3,500 tons were purchased on June 12, two weeks after the initial purchase.

6. (a) Under the terms of the purchase agreement, 70 per cent of the quantities of sugar listed in the preceding finding was for export, and 30 percent, including the 2,000 tons of pile sugar, was held for deposit by the Argentine Government for home consumption until August 22, 1920, at which time the Argentine Government was either to take over the deposit on the basis of a stated price or to permit the sale of the sugar for home consumption at market value.

(b) The terms of the sale further required Watson to open immediately, at Buenos Aires, an irrevocable letter of credit in favor of Compania. Payments against the letter of credit were to be made upon presentation of and in exchange for shipping documents (bills of lading) or storage receipts (deposit certificates or warehouse receipts) or any combination thereof. Delivery was to be made in July and August 1920.

7. On June 5, 1920, Watson advised the Walter M. Lowney Company, of Boston, that he was "authorized to close 2,000 tons of Argentine * * * sugar * * * June/July shipment from Buenos Aires." In a subsequent telephone conversation, which Lowney confirmed by a letter dated June 8, Lowney advised it could take this quantity of sugar and asked "to have contracts presented for execution." A contract for the purchase by Lowney of 2,000 long tons at 19 cents per pound was made and dated June 12, 1920.[10]

8. (a) Some time during the weeks or months immediately prior to the Watson transactions, J. P. Morgan and

[10] Lowney arranged credit to cover the purchase through the International Trust Company of Boston. According to an affidavit made by Watson on December 10, 1920, the shipment against this letter of credit was 800 tons short.

Company (hereinafter referred to as Morgan) and other bankers organized the Foreign Finance Corporation, with a Morgan partner as its head, to finance importations of sugar (and possibly other commodities).

(b) On June 10, 1920, Morgan cabled its correspondent in Buenos Aires instructions to advise Compania of the opening of a letter of credit in favor of Compania in the amount of $348,500 for the account of Watson against shipments aggregating 1,000 long tons of sugar,[11] drafts to be drawn at 90-day sight, accompanied by shipping documents made out to the order of Morgan, shipments to be completed and bills drawn before July 31, 1920. This letter of credit was designated by Morgan as Credit No. 40.[12]

9. (a) Some time during the early part of June 1920 (before June 10), one of Morgan's attorneys (Walter S. Orr, hereinafter referred to as Orr) advised the head of Foreign Finance Corporation that in financing importations of sugar care should be exercised to avoid involvement in complications under the Lever Act. Orr was thereupon given the assignment of seeing what arrangements, if any, could be made to assure Watson's freedom from Lever Act prosecution if he imported sugar into the United States and sold it.[13]

(b) On June 11, 1920, Orr and Watson conferred in Washington with Special Assistant to the Attorney General Howard E. Figg in relation to possible means of importing

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[11] This credit amounted to approximately 16 cents per pound, and the Morgan letter specified "not exceeding 16 cents per pound."

[12] Another Morgan credit, designed as Credit No. 41, appeared later in the Watson transactions.

[13] The evidence does not show specifically any approach by Watson to Foreign Finance Corporation as distinguished from Morgan in Watson's search for credits. Inasmuch, however, as Watson had undertaken a transaction involving $3,000,000 or more, it is a fair inference that Foreign Finance was interested in Watson and vice versa.

sugar without incurring Lever Act sanctions. Figg, who was not a lawyer, was unable to advise them how the importation might be so made, and suggested that they confer with Special Assistant Armin W. Riley (who was a lawyer, and whose office was then in New York).

10. On June 16, 1920, Watson entered into an agreement with E. Atkins and Company for sale by him to Atkins of 2,000 long tons of Argentine sugar at 19¼ cents per pound, for shipment from the Argentine during "June/July 1920."[14]

11. Some time after Watson's sales to Lowney (finding 7) and to Atkins (finding 10), Watson and Bolle entered into a contract embodying the terms of the agreement between Bolle and Compania (described in finding 6) and fixing the commission to be received by Bolle, with specific references to the sales to Lowney and Atkins, and generally as to additional quantities.

12. Following are excerpts from the summary reports on refined sugar as contained in the Weekly Statistical Sugar Trade Journal in three succeeding issues extending from June 3 to June 17, 1920.

(1) June 3, 1920. "No changes were made during the week in local allotment prices, except that American has extended their * * * price of 22.50¢ to cover July and August shipments, but we have advices from San Francisco * * * [which] * * * indicates an increasing supply of sugars on the West Coast, and as the California beet crop will soon be going to harvest, the West Coast refiners should then be enabled to forward their sugars as far east as * * * Chicago

[14] The purchaser agreed to open bank credits immediately in New York for the full invoice value. It is to be inferred that some such credit was arranged, since Atkins ultimately paid Watson an amount sufficient to cover 1,948 long tons at 19¼ cents per pound.

* * *. This condition of affairs, together with the increasing imports of foreign raws, suitable for grocery and manufacturing trade, and the increased meltings at the Atlantic ports and Gulf refineries, should soon be able to relieve the general demand for refined sugar. As it is, while the demand is still large, there does not appear to be the active inquiry that was previously noted for refined sugars, and for this reason *it is somewhat difficult to dispose of imported white sugars.*[15] The sale of this latter group of sugars has also been affected by the sharp decline in raws recently as well as the difficulty of obtaining credits that are necessary to finance such purchases. Java, Argentine, and other sugars have been offered in round quantities at various prices, from 22½¢ down to 20¢ c. i. f."

(2) June 10, 1920. "During the week American * * * announced that they were alloting granulated sugar at 22.50¢ less 2% for September, October and November/December shipments, and * * * Howell announced change in their allotment basis to 22¢. Warner allotted sugars for July/August shipment, their option, at 24¢. * * * Western * * * advanced their allotment price to 26.30¢ * * *. The first check in the advancing prices for refined is wired from San Francisco, where * * * Californian * * * reduced their allotment basis from 26.30¢ to 25¢. There is a decided slackening off in the demand from manufacturers and jobbers for white raws and it is much more difficult to dispose of these sugars, although they are freely offered at lower prices than have been recently paid. Several markets have reported that conditions are much improved and that the trade is now getting an increased quantity of sugar. The arrivals of foreign granulated and white raws are large this week * * *. Advices from Michigan report that the acreage planted in beets for this fall's crop has increased 30% from last year."

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[15] Emphasis supplied.

(3) June 17, 1920. "Some changes have been made in allotment prices, Savannah adjusting their price from 18.50¢ to 20.50¢, and the McCahan from 20.50¢ to 19.50¢. San Francisco's two refineries * * * have reduced their allotment basis from 25¢ to 23.50¢. * * * American at New York continues to name 22.50¢ and the National 22¢, while Arbuckle, Federal, and Warner are temporarily out of the market. It is much more difficult to dispose of high grade raws * * *. * * * all Canadian refiners now quote basis 19.95¢ * * *."

13. On June 18, 1920, Watson and Orr conferred with Special Assistant to the Attorney General Armin W. Riley, (hereinafter referred to as Riley) concerning possible arrangements for Lever Act clearances in Watson's importations and sale of sugar.

14. (a) Thirty-four years after the event (in August 1954) Mr. Orr testified that Mr. Riley had said to him and Watson that the country was very much in need of sugar, particularly the canneries, because it was June and the fruit was coming in, but that if the sugar was to be imported it would have to be distributed by or through the Department of Justice; that the Department had no physical equipment for the distribution of it, but that something would be arranged. He further testified that Mr. Riley suggested that they (Watson and Mr. Orr) "get up a letter setting forth our understanding of the arrangements made with the Department of Justice through Mr. Riley."

Mr. Orr further testified that Mr. Riley exhibited a number of lists showing the quantity of sugar wanted by various people; that there was discussion of a profit to be made on the imported sugar of a cent and a fraction per pound; that the word "channels" may have been used in the conversation, although he could not be sure; that Mr. Riley may have said that he wanted the sugar distributed either

to ultimate retailers or hospitals or organizations who had uses for the sugar that was necessary for the public good; that Mr. Riley may have agreed to designate channels before the sugar arrived; and that, in fact, Mr. Riley showed them "* * * some channels * * * or some orders, or some places where he wanted it to go."

(b) Thirty-three years after the event (in February 1953) Mr. Riley testified that he told Watson that he (Watson) could bring in the sugar and distribute it according to the normal channels of distribution, and that he should not figure on more than one cent a pound profit, "which, of course, was a bit fluid, that one cent * * *." Mr. Riley further testified that the normal course of distribution meant sales by the importer to the wholesaler to the retailer to the ultimate consumer; that he was referring to normal channels of trade "* * * who had uses of sugar that was necessary for the public good;" that he was primarily interested in getting rid of the speculators;[16] and that the only way he could have enforced his stipulation with Watson was by presenting the case to the grand jury, since he had never urged Watson to import sugar,[17] and that he never told Watson that he (Watson) would have to have his (Riley's) permission or consent for any transaction.

Mr. Riley further testified that in his conversation with Watson and Mr. Orr he never had reference to individual buyers; that the lists he showed to them were lists of pur-

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[16] "As, for instance, they had a group meeting in the Yale Club once of six brokers who each sold to the other large shipments of sugar. When they came in the sugar was a certain price and when they went out it was six cents higher, and nobody was benefited by it except the brokers and it hadn't proceeded one step toward the ultimate consumer." From the deposition of Armin W. Riley, page 12.

[17] Mr. Riley testified (p. 39) that he did ask a committee of sugar importers to try to bring sugar into the United States from Argentina, but that Watson was not a member of the committee.

chases that had been reported to him by a committee of importers for assurance to him that the imported sugars were going into proper channels of trade; and that when he got the lists the transactions shown thereon had been consummated.

15. (a) Immediately after the Riley-Watson-Orr conference on June 18, 1920, Watson drafted a letter to Riley, summarizing the situation and their discussion. Following is the text of the Watson draft:

> I take this opportunity of confirming to you my understanding of ~~our~~ the attitude of the Govt as it relates to importations of Argentine Sugar by me.
>
> I propose & have arranged financing for the purpose ~~of~~ to import during the next three months a large quantity of refined Argentine sugar.
>
> I propose to sell this sugar ~~to~~ where it will reach such channels as ~~you~~ the Dept of Justice through your instrumentality may indicate and which I understand will be in the direction which will be for the public good.
>
> In consideration of my accepting the control of the Dept. for the distribution of my importations of Argentine sugar in the ~~channels~~ manner above described and which I accept I understand & desire you to so confirm that I will be permitted to sell said importations at a profit not exceeding?

(b) Watson gave his draft to Orr, who prepared another letter, which he submitted to the senior member of his law firm, by whom some changes were made in Orr's draft. Orr gave the amended copy to Watson, who set it up on his own stationery, and sent it to Riley.

The letter was dispatched by Watson to Riley on June 19, 1920, and comprises the first item in an exchange of correspondence upon which plaintiff relies as a contract in

writing. Plaintiff's claim in this suit is based upon an alleged breach of the contract by defendant.

16. The exchange of correspondence described in the preceding finding follows:

(a) June 19, 1920, from Watson to Riley:

> In connection with the proposed purchase of a large quantity of refined Argentine sugar, I have been in communication with your office, both in Washington and in New York, in order to clarify the situation, particularly as regards the operation of the Lever Act applied to the sale of this sugar in the United States.
>
> The facts are substantially these.
>
> I am in a position to accept offers for refined Argentine sugar, which is [sic] was proposed to market in this country. In order to obtain the sugar, it was necessary to present the proposition to financial institutions so that proper arrangemens [sic] could be made to establish credits necessary to finance the purchase.
>
> You will appreciate that the regulations concerning the export of sugar, issued by the Government of the Argentine Republic, and the attendant hazards in connection with the purchase and sale of this sugar make this transaction entirely different from the ordinary transactions carried on by the ordinary wholesaler of sugar in this country.
>
> In view of the great shortage of sugar in this country, it was deemed advisable to discuss with your department the advisability of bringing this sugar to America, and the possible effect of the Lever Act upon the profit believed to be necessary in order to meet the risks involved and the necessary financing.
>
> Some days ago this situation was fully discussed with your department in Washington and the difficulties arising under the Lever Act seemed to be such as to make it inadvisable for me to pursue the matter

further, but the great shortage of sugar in this country and the need to take measures to relieve the same has caused me to take up the matter anew with you in order to see if the transaction can be consummated. I am therefore laying the matter before you again for consideration, after an informal discussion with you today. I am prepared to do my best to carry the transaction through, provided your department will write me a letter giving its sanction to the importation of sugar from Argentina upon the following conditions:

1. Upon the basis of the present cost price to me of refined Argentine sugar, approximately 17¼ cents per pound c. i. f. American ports, I propose to market the sugar at not exceeding 20 cents per pound.

2. Should the cost price to me of refined Argentine sugar change, the sale price by me would increase or decrease proportionately, as the case may be, so that the sale price might be either greater or less than 20 cents per pound, dependent upon the cost price to me.

3. I agree to permit your office to designate the channels through which this sugar shall be distributed, provided that the ultimate purchasers satisfy me as to their financial standing, and as to the terms of settlement.

Inasmuch as I expect to begin the importation of this sugar at once, it is highly important that your decision be rendered immediately, so that negotiations can be completed and credits cabled.

(b) June 23, 1920, from Watson to Riley:[18]

I take this opportunity of confirming to you my agreement to distribute all sales made after this date of Argentine sugar which I may import in such direction as you may from time to time indicate, and I am very pleased indeed to think that with your cooperation I can supply those industries which are badly in need of this commodity at a lower net price than they can obtain in any other direction. • • •

(c) June 23, 1920, from Riley to Watson:

This is to confirm our various conversations and in reply to your letters of June 19 and 23, 1920.

In view of the fact that the sugar requirements of the people of this country are in excess of the supply now available and in order to encourage the importation into this country of foreign sugars, you will be permitted to import the sugars mentioned upon the terms set forth in your said letters.

You are further informed that if you carry out the Department's requirements as to price and distribution as so set forth, no prosecutions under the Lever Act, as amended, will arise therefrom.

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[18] Plaintiff attached to his petition as Appendix B, a purported letter from Watson to Riley, which was also dated June 23, 1920. Although Riley testified (more than 30 years after the event) that he never received the letter, it is possible that it was delivered to Riley, and that it is the letter of June 23 to which Riley referred in his reply. In that event, the instant letter of June 23 from Watson to Riley may have been Watson's response to Riley's reply. The text of the purported letter from Watson to Riley follows: "I enclose your letter, which I think will cover the matter which we discussed this morning and if you can kindly hand bearer the response, I will proceed in this matter immediately. I have 1,000 tons for July shipment and understand you are referring interested parties to me today or tomorrow. I will be pleased to see them at any time."

17. (a) Within that portion of June 1920 preceding the foregoing exchange of correspondence Watson had arranged for credits covering 5,000 long tons of sugar: 2,000 tons sold to Lowney; 2,000 tons told to Atkins; and 1,000 tons covered by Morgan's Credit No. 40.

(b) Within that portion of June 1920 following the exchange of correspondence set forth in the preceding finding, Watson arranged with the Bank of British West Africa for a letter of credit in the amount of $120,000. This commitment remained unused until December 2, 1920.

18. (a) On June 24, 1920, Special Assistant to the Attorney General Howard E. Figg issued to the press the following statement:

> The sugar purchased in Argentine by the American Trading Company, was purchased under the direction of the Department of Justice and representations made by the State Department to President Irogoyen that the same was purchased and would be distributed under the direction of Government Agencies, is entirely correct. The American Trading Company, with the assurance of the Department of Justice that a permit would be issued for the exportation of certain sugars, entered the Argentine market and purchased these sugars at the prevailing market prices. When 14,000 tons had been secured a formal request was made for permits to export. In the meantime, a decree providing certain restrictions had been issued by the Argentine Government. When proper representation was made to President Irogoyen, for the issuance of the permit he consented to do so on the assurance that these sugars were for distribution by the Department of Justice, and not purchased by private American interests. On arrival in New York, this sugar will be distributed by the United States Government to the essential industry and household consumer.

(b) Neither the American Trading Company nor the transaction to which the foregoing statement relates is otherwise identified or explained by the evidence.

19. Following are excerpts from the reports on refined sugar as contained in the Weekly Statistical Sugar Trade Journal in four succeeding issues extending from June 24 to July 15, 1920.

(1) June 24, 1920. "* * * California & Hawaiian * * * refined sugars * * * are being offered at 23¢ less 2% at San Francisco on an open basis, that is to say that allotments are now done away with on the coast. * * * Western * * * also reduced their quotation to 23¢ * * *. This apparently is an indication that before long these sugars will be offered openly in all markets. There have been no changes in the local refiners quotation, but the demand generally has slackened, and there is an increased number of refiners allotments declined by buyers. Regarding the high grade raws and foreign refined, the arrivals of these sugars continue to come along steadily * * *. Buyers in some instances appear to have over-bought on these raw sugars and the offering to re-sell some of them has been one of the causes of the weakness in the raw market. * * * Howell * * * have a line of Argentine white sugars which *they are disposed to offer* to the canning and packing trade only on the basis of 21.30¢ less 2% f. o. b. New York.[19] These sugars are destined to arrive at New York August/September and early October. * * *

(2) July 1, 1920. "The demand generally for refined sugar has fallen off and there is more disposition on the part of holders of high class raws to dispose of same. * * * Arbuckle * * * have sold all the sugar available at their last allotment price of 24¢ and * * * they are now temporarily withdrawn. * * * The demand on the West Coast * * *

[19] Emphasis supplied.

had been very light and it has necessitated a further decline in refined prices. * * * The Meinrath Brokerage * * * estimate * * * the coming domestic beet crop * * * as 863,000 tons against last year's outturn of 652,957 tons. * * *"

(3) July 8, 1920. "The demand for refined sugar has shown a decided falling off * * *. Of course with the slackening in demand for white sugars there is difficulty in disposing of the high grade raws, some of these sugars being offered around 18½¢ to 19¢, duty paid. Recent offerings have been made of granulated for February/April 1921 shipment from Atlantic and/or Gulf ports at 20¢ less 2%. The reports from our domestic beet crop are very favorable * * *."[20]

(4) July 15, 1920. "The situation locally in refined sugars is unchanged. The demand is very quiet, and it is now quite difficult to dispose of sugars except in scattered localities where supplies are still limited. * * *"

20. (a) On July 19, 1920, Morgan opened a second letter of credit (No. 41) in the amount of $348,500 in favor of Compania and for the account of Watson.[21]

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[20] The Journal for July 8, 1920, also carried a review of the consumption of sugar during the first six months of the year. Excerpts follow. "* * * The six months' consumption this year * * * shows an increase of only * * * 4.094% over that of the same period in 1919. A part of the trade had been calculating on an immense increase in the consumption this year, which was attributed to the increase in the consumption of candies and soft drinks chiefly due to prohibition, but * * * the extent of the increase was curtailed to a large degree by high prices, and the inability at times of buyers to secure sugar * * *. * * * consumption of sugar during the first half of the year usually is in excess of that of the second half. * * *"

[21] This credit, as well as the earlier one (No. 40) in like amount, was unsecured except by the sugar it was to purchase. No details relating to Morgan's commitment or decision to issue it are in evidence.

(b) The foregoing credit, and the credit arranged with the Bank of British West Africa (finding 17), represent the only credits shown by the evidence to have been arranged after the exchange of correspondence between Watson and Riley (finding 16).

21. It is not established by the evidence:

(1) That between June 23 (the date of Riley's letter) and July 19, 1920 (the date of Morgan Credit No. 41), Watson had the financing with which to offer Argentine sugar for sale, excepting the commitment of $120,000 of the Bank of British West Africa, which was unused until December (finding 17); or

(2) That after June 23, 1920 (the date of the Riley letter), Watson made commitments for the purchase of Argentine sugar in addition to those made by him in late May or early June through Bolle and Compania, except insofar as Morgan Credit No. 41 and the credit arranged with the Bank of British West Africa may have been used to make the earlier commitments of Watson, Bolle, and Compania available for offer by Watson on the American market; or

(3) That Watson, in arranging either the $120,000 credit with the Bank of British West Africa or Morgan Credit No. 41, did so in reliance on any commitment or undertaking by Riley to supply the names of potential purchasers of Watson's sugar.

22. (a) On July 22, 1920, the Weekly Statistical Sugar Trade Journal reported a "decidedly weak situation" in regard to raw sugars, and said: "The chief cause of the decline has been the disposition on the part of wholesale grocers, manufacturers and jobbers to resell a large part of their foreign white and refined sugars * * *. * * * in many instances these buyers had over estimated their

wants, and they now apparently have more sugar than they can conveniently handle and for this reason are trying to dispose of their holdings at the least possible loss. The free offering of this class of sugar has naturally affected the demand for American refiners' product * * *."[22]

(b) Following are excerpts from the reports on refined sugar as contained in the Journal in five succeeding issues extending from July 22 to August 19, 1920.

(1) July 22, 1920. "* * * the demand generally is very quiet and refined buyers are more disposed to sell than to add to their purchases. * * *"

(2) July 29, 1920. "* * * The demand is generally light * * *. Arbuckle * * * had no difficulty in disposing of their latest allotment at 21¢ less 2%, but there is such an urgent disposition to resell that American refiners' granulated has sold in Western cities as low as 19½¢. * * *"

(3) August 5, 1920. "The demand for refined is very light and with continued free offerings of outside sugars from 17¢ to 18¢, duty paid, for granulated and white raws * * *. * * * The crops in general promise abundant yields; stocks of sugar, while heavy in some sections and light in others, indicate an ample amount to meet requirements."

(4) August 12, 1920. "The demand continues very quiet and there is quite a disposition on the part of grocers to resell Eastern refiners granulated; during the week fair sized lots were sold at 18½¢ * * * and at 18¢ * * *."

(5) August 19, 1920. "Arbuckle's price of 17.10¢ * * * established late on Thursday, continues unchanged, and they report that the business on this basis is very light. * * *"

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[22] When American refined sugar was available, Argentine sugar sold at discount in United States as compared with the American product.

23. (a) Some time during July and the early part of August 1920, sugar purchased by Watson was shipped from Argentina on account of Watson's sales to Lowney and to Atkins, and on the account of Morgan Credit No. 40. The disposition of the sugar covered by the Morgan credit, amounting to 467 long tons, is not established by the evidence. The amount of sugar shipped to Lowney and Atkins is uncertain.[23]

(b) Shortly after August 19, 1920, the steamship WINONA left Buenos Aires for New York with 1,781 long tons of sugar aboard consigned by Compania to Morgan (973 long tons)[24] and to Watson (808 long tons).[25]

(c) It is not established by the evidence that after June 23, 1920 (the date of the Riley letter), Watson was in position to offer Argentine sugar for sale in the United States prior to the departure of the WINONA from Buenos Aires.[26]

24. (a) The WINONA arrived in New York on September 22, 1920. The cargo of sugar consigned to Morgan and Watson was removed to storage, where it remained for several months.

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[23] Watson is responsible for the statement that the Lowney shipment was 800 tons short. He also recorded, however, that the Atkins shipment was 200 tons short, although he subsequently acknowledged that Atkins had paid him an amount sufficient to cover 1948 long tons at the sale price of 19¼ cents per pound.

[24] Morgan Credit No. 41, issued July 19, 1920, in the amount of $348,500 (finding 21) was applied to this portion of the shipment.

[25] The $120,000 credit advanced by the Bank of British West Africa (finding 17) was activated on December 2, 1920, and applied to this portion of the shipment.

[26] The claim of plaintiff in this case is not concerned with the sugar described in subparagraph (a), above. The claim is based upon losses alleged to have been incurred in connection with (1) the sugar described in subparagraph (b), and (2) another lot of 1,429 long tons which never left Argentina.

(b) On September 23, 1920, American refined sugar was being quoted at 14½ cents per pound, according to a report published in the Sugar Trade Journal. Sugar quotations continued a steady decline thereafter.

25. (a) On October 21, 1920, Watson wrote Riley to the effect that he (Watson) had been unable to get any response to many letters sent to the Department of Justice concerning his sugar importations and had therefore taken up the matter with Mr. George W. Wickersham.[27] Riley replied on November 9, 1920, asking Watson to supply him with copies of the letters, since (as he advised) he had received no communications from Watson. Thereafter, an exchange of correspondence occurred as set forth in the next two subparagraphs.

(b) November 12, 1920, from Watson to Riley:

> Answering your esteemed favor of November 9th, I beg to advise you that after our original arrangement in June, I wrote you on June 23rd stating that "I have 1,000 tons for July shipment and understand you are referring interested parties to me today or tomorrow."
>
> You then told me that the Department of Justice was not personally going to handle any merchandise but that I would receive from Mr. James Boyd of 135 Broadway, instructions where shipments should be directed under the agreement I had made with the Department of Justice. I received one written instruction from Mr. Boyd dated July 23rd to ship 80,000 lbs. of Argentine Refined Sugar to Mr. F. B. Lovelace of Poughkeepsie. When the sugar arrived, I notified Mr. Boyd of this fact, and asked him from whom I was to receive payment. He then told me that I was not to ship the sugar to Mr. Lovelace as he had supplied his requirements elsewhere, and the sugar was left

[27] Mr. Wickersham was Attorney General of the United States, 1909-1913.

on my hands. Seeing the awkward position I was being placed in through having made any agreement with the Department of Justice, I immediately notified the Department of the arrival of the sugar in New York and asked for their instructions. My letters were ignored. The first one was addressed to the Department of Justice in Washington, for your attention, and the second one to the Department of Justice in Washington, without being marked for your attention. No answer being forthcoming, I presented the arrangement to Mr. Wickersham for his advice, the difficulty that I was being in was having my hands tied as to the disposition of the sugar brought in under the agreement made by me with the Department of Justice.

I certainly think that the Department should give me every assistance in their power rother [sic] than take the attitude they seem to be doing at the present time by ignoring communications.

(c) November 17, 1920, from Riley to Watson:

Permit me to refer to your letter dated November 12th in which you acknowledge receipt of my letter of the 9th inst. This would seem to contradict the last paragraph in your letter in which you state you received no replies from me to any of your communications.

I have heretofore requested you to give me copies of your previous letters, and also to inform me of the nature of the assistance which you seem to expect from this department.

I suppose you now find yourself in the position in which many sugar speculators are in, namely, threatened with heavy losses, because of the purchase of sugars at a high price, and your inability to dispose of them at a profit to you. Of course, the Government

cannot interest itself in transactions of this sort. As I remember it, your sole purpose in coming to this department in the first place was to attempt to get some special dispensation whereby you could sell your sugar at a price in excess of that allowed to the wholesale dealers. I might add that you received exactly the same treatment as did all those dealing or attempting to deal in this commodity. The large importers and refiners were all under the same regulations as were you, and no other one has seen fit to criticize either inferentially or otherwise, our acts in this connection.

To be perfectly frank, I am more impressed by the losses undergone by the wholesale dealers who have had to have sugar in order to conduct their business than I am at the losses sustained by those who had never before been in the sugar business and merely attempted to exploit the needs of the public at an extremely critical period.

If, however, I can properly be of any assistance to you, please so inform me.

26. (a) The 1,781 long tons of sugar described in finding 23 (b) were sold between December 1920 and March 1921, at a price of approximately 5.6 cents per pound. The proceeds of the sale were applied to the credits advanced by Morgan (Credit No. 41) and the Bank of British West Africa. After accounts were struck as between these banks and Watson, the latter was indebted to Morgan in a sum in excess of $200,000 and to the other bank for more than $31,000.

(b) In the liquidation of Watson's sugar purchases, 1,429 long tons were sold in Argentina, at a price of approximately 7.8 cents per pound.

(c) Plaintiff's claim in this action is for the losses sustained by Watson in the liquidation of the two lots of sugar described in the preceding subparagraphs.

27. (a) It is not established by the evidence (1) that a loss was sustained on account of the sugar sold in Argentina; (2) that any of such loss, if one was so sustained, fell on Watson; or (3) that if Watson had sustained such a loss, it would have any relation to the Watson-Riley agreement of June 1920 (finding 16).

(b) The course of transactions between Watson and Bolle, and between Bolle and Compania, is not sufficiently developed by the evidence to make possible a coherent account of it.

Both Bolle and Compania subsequently ran into financial difficulties. Whether or not their difficulties were attributable to the collapse of the sugar market is not established by the evidence.

During the early period of Watson's sugar transactions, he was endeavoring to consummate sales in the United States in such manner that the profit therefrom and the advantage to be gained from the falling value of Argentine paper pesos in terms of dollars would suffice to finance Compania in carrying the deposit in Argentina of 30 percent of the sugar purchased.

The evidence does not disclose what disposition was made of this deposit: whether the Argentine Government took over the deposit, on or after August 22, 1920, or permitted the sale of the sugar for home consumption at market value (finding 6), although the inference favors the latter.

The evidence does not disclose what the exchange rate was between Argentine pesos (paper or gold) and United States dollars at any given date, or when dollars were used to buy pesos, or when payments of pesos were made by Compania, or when or if dollars were paid by Watson to Bolle or by Bolle to Compania for the settlement of accounts, or when or if such accounts were ever settled.

28. (a) The evidence as a whole warrants the inferences (1) that after Watson's venture in Argentine sugar was

liquidated, he was ruined financially; (2) that his indebtedness to the banks that had extended credit to him (finding 26) was a substantial factor contributing to his ultimate ruin; and (3) that he did suffer severe losses in the liquidation of the 1,781 tons of sugar shipped on the WINONA.

(b) The amount of Watson's losses in the liquidation of the 1,781 tons of sugar cannot be determined from the evidence with exactness. Whether or not the evidence as a whole would support a determination of the amount in the nature of a jury verdict is a question that is not reached in these findings.

29. It is not established by the evidence:

(1) That Riley intended to undertake or implied that he would undertake to supply to Watson the names of purchasers who would buy the sugar Watson expected to import, or that Watson understood Riley at the time to intend or imply such an undertaking;[28] or

(2) That Riley did not "designate the channels through which the sugar shall be distributed" at the conference with Watson on June 18, 1920;[29] or

(3) That, after the Watson-Riley agreement of June 1920, Watson sought or refrained from seeking purchasers of the sugar because of anything contained in the agreement; or

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[28] Defendant concedes that Riley did not at any time supply to Watson the names of such prospective purchasers.

[29] The letter on which plaintiff primarily relies was written for Watson by Morgan's attorneys. They were concerned at the time with formalizing a commitment to protect Watson from Lever Act prosecution. Language was used in the letter which suggests an effort on their part to project the commitment to a future date, to be established whenever Riley should formally confirm it. Watson's proposal "to permit your office to designate the channels through which this sugar shall be distributed" may reflect no more than the draftsman's means of projecting the commitment.

(4) That, after the Watson-Riley agreement of June 1920, the market in the United States for granulated sugar brought or to be brought from the Argentine was ever such that Watson could have disposed of his commitments or any part thereof at a profit to him.

30. The text of the statute under which this action is prosecuted follows:

> * * * the Court of Claims * * * is given jurisdiction to hear, determine on the merits, and to render in accordance therewith judgment upon the claim with such interest as the court may determine, of Preston L. Watson, as administrator * * * of Robert A. Watson, deceased, against the United States for alleged loss and damages suffered by Robert A. Watson arising out of certain transactions between said Robert A. Watson and the Department of Justice of the United States, involving the purchase and importation of sugar from the Republic of Argentina in June 1920, and the alleged neglect, refusal, and failure of the Department of Justice to provide for the distribution thereof in accordance with the terms of a written agreement between claimant's decedent and said Department. Suit upon such claim may be instituted at any time within six months after the date of enactment of this Act, notwithstanding the lapse of time, laches, or any statute of limitations. Proceedings for the determination of such claim, and appeals from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which said court has jurisdiction under section 1491 of title 28 of the United States Code: *Provided*, That this Act shall be construed only to waive the defense of lack of authority of the Department of Justice or its officers in making said agreement and the immunity from suit of the Government of the United States with respect to the

claim of Preston L. Watson, as administrator * * * of Robert A. Watson, deceased, and not otherwise to effect any substantive rights of the parties. Enactment of this Act shall not be construed to raise any implication of liability by the United States.

31. (a) Promptly after the presentation of plaintiff's evidence, defendant moved, under Rule 49 (c), for dismissal of the action on the ground that "the evidence shows that plaintiff has no right to recover" because—

(1) "There was no contract with the United States to furnish purchasers of sugar;"

(2) "If there was a contract, it was not one to furnish purchasers at a particular price;"

(3) "If it was a contract, there is no evidence of any breach of the contract; and"

(4) "If there was a breach, there is no evidence of any damage."

(b) On the basis of the foregoing findings of fact, with particular reference to the failures of proof recited in findings 21, 23 (c), 27, and 29, it is recommended that defendant's motion be granted and that the petition be dismissed.

APPENDIX B

Judgment

CONCLUSION OF LAW

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is not entitled to recover, and the petition is therefore dismissed.

APPENDIX C

Order Overruling Motion for Rehearing

Plaintiff's motion for rehearing.

On May 31, 1956, plaintiff filed a motion for rehearing or new trial.

On July 12, 1956, the court entered the following order on said motion:

ORDER

These cases come before the court on motions for rehearings, amendment of judgments or new trials under Rules 53 and 54 of the Rules of this court and, on consideration thereof,

It Is Ordered this twelfth day of July, 1956, that said motions be and the same are overruled as follows:

• • •

50407 Preston L. Watson, as Administrator of the Goods and Chattels, Rights and Credits, which were of Robert A. Watson, deceased. Plaintiff's motion.

• • •

By The Court

/s/ Benjamin H. Littleton
Benjamin H. Littleton
Acting Chief Judge.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	7
Appendix	8

CITATIONS

Statutes:	
Act of October 18, 1951, Private Law 334, 65 Stat. A124	2, 8
Food Control Act (Act of August 10, 1917, 40 Stat. 276, as amended by the Act of October 22, 1919, 41 Stat. 297	3

406647—56

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 490

PRESTON L. WATSON, AS ADMINISTRATOR OF THE GOODS AND CHATTELS, RIGHTS AND CREDITS, WHICH WERE OF ROBERT A. WATSON, DECEASED, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. A, 14–51) is not yet reported.

JURISDICTION

The judgment of the Court of Claims (Pet. App. B, 51) was entered on May 1, 1956 (Pet. App. A, 14). Plaintiff's motion for rehearing (Pet. App. C, 52), timely made, was denied on July 12, 1956 (Pet. App. C, 52). The petition for a writ of certiorari was filed on October 8, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1) and 65 Stat. A124.

QUESTION PRESENTED

Whether Department of Justice officials agreed to supply petitioner's decedent with the names of purchasers who would purchase his sugar at a profit.

STATUTE INVOLVED

The Act of October 18, 1951, Private Law 334, 65 Stat. A124, granting jurisdiction, is set forth in the Appendix, *infra*, pp. 8–9.

STATEMENT

This litigation arises out of negotiations between petitioner's decedent, Robert A. Watson, and representatives of the Department of Justice during the summer of 1920. Petitioner contends that these negotiations resulted in a written agreement [1] by which the Government undertook to supply Watson with purchasers for certain Argentine sugar at a profit. The price of sugar fell drastically following these negotiations, and Watson suffered severe losses in disposing of his sugar (Pet. App. A, 22). In 1951, by a private act (65 Stat. A124), Congress conferred jurisdiction on the Court of Claims to determine the legal effect of these 1920 negotiations without regard to a time bar or lack of authority of the governmental officers.

Following World War I, certain economic dislocations gave rise to a shortage of various foods, among them sugar. To prevent speculation and profiteering,

[1] Jurisdiction was granted to the court below only to determine alleged losses arising out of a "written agreement" (65 Stat. A124).

Congress, in 1919, passed the Food Control Act (Act of August 10, 1917, 40 Stat. 276, as amended by the Act of October 22, 1919, 41 Stat. 297), popularly known as the Lever Act, which imposed criminal penalties upon persons guilty of wilfully making unreasonable charges for necessaries. "Necessaries", as used in the Act, included sugar (Pet. App. A, 16).

In May 1920, plaintiff arranged to purchase 9,850 tons of Argentine sugar for 17¼¢ per lb. (Pet. App. A, 19, 28; Fdg. 5). The banks considering financing the purchase became concerned over becoming involved in Lever Act prosecutions (Pet. App. A, 30; Fdg. 9). J. P. Morgan & Co. assigned one of their attorneys, Mr. Walter S. Orr, to determine what arrangements might be concluded to assure Watson's freedom from Lever Act prosecution (Pet. App. A, 30; Fdg. 9). In this connection, Orr and Watson conferred and corresponded with the Department of Justice. The Court of Claims concluded that petitioner failed to prove that these exchanges resulted in a written agreement to supply Watson with purchasers (Pet. App. A, 22), and, on the Government's motion, dismissed the petition at the close of plaintiff's case (Pet. App. B, 51).

Since the questions in the case are factual ones regarding the legal effect of these negotiations, their details will be discussed in the Argument, *infra*.

ARGUMENT

Petitioner seeks reversal of determinations by the Court of Claims of the particular and special issues of this case which are both multiple and based on voluminous testimony. No issue of general signifi-

cance is raised either by the case or by the petition; the litigants alone are affected by the decision. Plainly, no question is presented which merits review by this Court, but since the petition discusses the specialized issues at length we consider them briefly for the Court's convenience.

1. On June 18, 1920, Watson and Orr conferred in New York with Special Assistant to the Attorney General Armin W. Riley, in charge of enforcement of the Lever Act. This conference ended with an arrangement that Watson and Orr draft a letter setting forth their understanding of the conference with Riley (Pet. App. A, 33, Fdgs. 13, 14). This letter, dated June 19, 1920, is reproduced in full in the opinion of the court below (Pet. App. A, 18–19) and, in relevant part, reads as follows:

> * * * I am prepared to do my best to carry the transaction through, provided your department will write me a letter giving its sanction to the importation of sugar from Argentina upon the following conditions:
>
> 1. Upon the basis of the present cost price to me of refined Argentine sugar, approximately 17¼ cents per found c. i. f. American ports, I propose to market the sugar at not exceeding 20 cents per pound.
>
> 2. Should the cost price to me of refined Argentine sugar change, the sale price by me would increase or decrease proportionately, as the case may be, so that the sale price might be either greater or less than 20 cents per pound, dependent upon the cost price to me.
>
> 3. I agree to permit your office to designate the channels through which this sugar shall be

> distributed, provided that the ultimate purchasers satisfy me as to their financial standing, and as to the terms of settlement.

On June 23, 1920, Watson again wrote to Riley (Pet. App. A. 19; Pet. App. A. 38, Fdg. 16 (b)) setting forth the above understanding in even more general terms.[2]

Riley replied on June 23, 1920:

> This is to confirm our various conversations and in reply to your letters of June 19 and 23, 1920.
>
> * * * [Y]ou will be permitted to import the sugars mentioned upon the terms set forth in your said letters.
>
> You are further informed that if you carry out the Department's requirements as to price and distribution as so set forth, no prosecutions under the Lever act, as amended, will arise therefrom.

The letter of June 19, 1920, to Riley was originally drafted by Watson himself. It was revised by Orr, a member of the law firm of White and Case, and was reviewed by the senior member of the firm, Mr. George Case, as well as by Mr. Anderson of J. P. Morgan & Co. (Tr. 116–117; Pet. App. A, 35; Fdg. 15 (b)). It is hardly conceivable that this group of highly trained and competent legal minds could have expressed an obligation to supply Watson with a list of purchasers, guaranteeing their purchase at a profit,

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[2] Petitioner claims Watson wrote a third letter to Riley on June 23, 1920. Riley denied having received this letter, and the court found that there was no competent proof that it was actually sent by Watson (Pet. App. A, 20).

in this vague general language. All the vital terms of the alleged obligation are missing. The price term is omitted; the time in which the Government is to perform is not stated; Watson's remedy for breach is omitted; the alleged obligation, to supply names of purchasers, is not specifically stated. Riley testified that he told Watson that he could bring in the sugar and distribute it according to the normal channels of distribution, and that he (Watson) could not figure on more than one cent a pound profit; that he (Riley) was primarily interested in getting rid of speculators; and that he never told Watson that he (Watson) would have to have his (Riley's) permission or consent for any transaction (Pet. App. A, 33–34; Fdg. 14 (b)). Orr himself testified that Riley may have said that he wanted the sugar distributed either to ultimate consumers or hospitals or organizations which had uses for the sugar for the public good; that in fact Riley showed them "some channels * * * or some orders, or some places where he wanted [the sugar] to go" (Pet. App. A, 33; Fdg. 14 (a)).

It is clear from the correspondence and the testimony that the only arrangement that was concluded was that Watson was assured of freedom from Lever Act prosecution, which was his chief concern, if the sugar were distributed through the normal channels of trade at a reasonable profit (20¢ for sugar purchased at 17¼¢), rather than through speculators who would pyramid the price.

2. Even if petitioner could show that the Government undertook to supply Watson with purchasers, this would overturn only one of several factual find-

ings made by the Court of Claims on which the decision rests. These other findings cannot be assailed. For one thing, petitioner argued in the court below (Plaintiff's Reply Br. 136) that Watson's letter of June 19, 1920, is to be construed as an undertaking to guarantee a price of 20¢ per pound (assuming a cost of 17¼¢ per pound). It is obvious that the language of the letter does not import the unusual undertaking which petitioners attribute to it. Moreover, the Court of Claims found that it was not established by the evidence that, after the date of the Riley letter, Watson was in a position to offer Argentine sugar for sale in the United States until after August 19, 1920 (Pet. App. A, 21, 24). By this time, sugar was selling in the United States below Watson's cost (Pet. App. A, 43; Fdg. 22 (b) (5)). There are also other inadequacies in petitioner's proof (see Pet. App. A, 23–24, 48–49).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. Lee Rankin,
Solicitor General.
George Cochran Doub,
Assistant Attorney General.
Samuel D. Slade,
Hershel Shanks,
Attorneys.

October 1956.

APPENDIX

The Act of October 18, 1951, 65 Stat. A124 provides:

AN ACT

To confer jurisdiction on the Court of Claims to hear, determine, adjudicate, and render judgment on the claim of Preston L. Watson, as administrator of the goods and chattels, rights, and credits which were of Robert A. Watson, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Court of Claims of the United States be, and hereby is, given jurisdiction to hear, determine on the merits, and to render in accordance therewith judgment upon the claim with such interest as the court may determine, of Preston L. Watson, as administrator of the goods, chattels, rights, and credits which were of Robert A. Watson, deceased, against the United States for alleged loss and damages suffered by Robert A. Watson arising out of certain transactions between said Robert A. Watson and the Department of Justice of the United States, involving the purchase and importation of sugar from the Republic of Argentina in June 1920, and the alleged neglect, refusal, and failure of the Department of Justice to provide for the distribution thereof in accordance with the terms of a written agreement between claimant's decedent and said Department. Suit upon such claim may be instituted at any time within six months after the date of enactment of this Act, notwithstanding the lapse of time, laches, or any statute of limitations. Proceedings for the determination of such claim, and

appeals from, and payment of, any judgment thereon shall be in the same manner as in the case of claims over which said court has jurisdiction under section 1491 of title 28 of the United States Code: *Provided,* That this Act shall be construed only to waive the defense of lack of authority of the Department of Justice or its officers in making said agreement and the immunity from suit of the Government of the United States with respect to the claim of Preston L. Watson, as administrator of the goods and chattels, rights, and credits which were of Robert A. Watson, deceased, and not otherwise to effect any substantive rights of the parties. Enactment of this Act shall not be construed to raise any implication of liability by the United States.

Approved October 18, 1951.

U. S. GOVERNMENT PRINTING OFFICE: 1986